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EXAMINER

MANOSKEY, JOSEPH D

ART UNIT

PAPER NUMBER

2113

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/935,030

Applicant(s)

FINTEL ET AL.

Examiner

Joseph Manoskey

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claim 1-3, 5-15, 17-26, and 28-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Herrbach et al., U.S. Patent 6,269,150, hereinafter referred to as "Herrbach".

Referring to claim 1, Herrbach teaches a method of automated testing of a communications system (See Col. 1, lines 9-10 and lines 60-61). Herrbach also discloses the testing system having a suite of tests in library procedure repository, this is interpreted as a plurality of tests in a test database, and running them sequentially, which is interpreted as selecting a first test (See Col. 3, lines 26-31 and Col. 5, lines 46-47). Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as identifying a communication resource for a test and determining if the communication resource is available (See Col. 3, lines 56-57 and Col. 5, lines 2-3). Herrbach teaches suite resource selection, this is interpreted as checking for resource

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availability including a first test from the plurality of tests (See Fig 2). Herrbach also teaches suite resource selection and case resource selection, the resources are determined to be available in the suite resource selection that is before the individual tests are run by procedures ensure they are available and usable (See Fig. 2 and Col 5, lines 2-10). Finally, Herrbach discloses running the test after the resource has been acquired, this is interpreted as generating a execute instruction for the test in response to the resource to the being available (See Col. 5, lines 14-16).

3. Referring to claim 2, Herrbach teaches storing and the test procedures in a library procedure repository and also skipping tests when no working resources are available (See Col. 3, lines 28-31 and Col. 6, lines 20-22). This is interpreted as storing the test back in the test database in response to the communication resource not being available.

4. Referring to claim 3, Herrbach discloses a suite of tests in the library repository (See Col. 3, lines 26-31). This is interpreted as receiving a plurality of tests for storage in the test database.

5. Referring to claim 5, Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as determining if the request is for general use of the communication resource (See Col. 3, lines 56-57 and Col. 5, lines 2-3).

6. Referring to claims 6-9, Herrbach discloses the testing system having a suite of tests in library procedure repository, this is interpreted as a plurality of tests in a test database, and running them sequentially, which is interpreted as selecting a second test (See Col. 3, lines 26-31 and Col. 5, lines 46-47). Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as identifying a communication resource for a test and determining if the communication resource is available (See Col. 3, lines 56-57 and Col. 5, lines 2-3). Finally, Herrbach discloses running the test after the resource has been acquired, this is interpreted as generating a execute instruction for the test in response to the resource to the being available (See Col. 5, lines 14-16).

7. Referring to claim 10, Herrbach teaches storing and the test procedures in a library procedure repository and also skipping tests when no working resources are available (See Col. 3, lines 28-31 and Col. 6, lines 20-22). This is interpreted as storing the test back in the test database in response to the communication resource not being available.

8. Referring to claim 11, Herrbach teaches an automated testing of a communications system, this is interpreted as a resource management system (See Fig. 1 and Col. 1, lines 9-10 and lines 60-61). Herrbach also discloses the testing computer having a suite of tests in library procedure repository, this is interpreted as a processor system coupled to a plurality of tests in a test database, and running them

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sequentially, which is interpreted as selecting a first test (See Col. 3, lines 26-31 and Col. 5, lines 46-47). Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as identifying a communication resource for a test and determining if the communication resource is available (See Col. 3, lines 56-57 and Col. 5, lines 2-3). Herrbach teaches suite resource selection, this is interpreted as checking for resource availability including a first test from the plurality of tests (See Fig 2). Herrbach also teaches suite resource selection and case resource selection, the resources are determined to be available in the suite resource selection that is before the individual tests are run by procedures ensure they are available and usable (See Fig. 2 and Col 5, lines 2-10). Finally, Herrbach discloses running the test after the resource has been acquired, this is interpreted as generating a execute instruction for the test in response to the resource to the being available (See Col. 5, lines 14-16).

9. Referring to claim 12, Herrbach teaches storing and the test procedures in a library procedure repository and also skipping tests when no working resources are available (See Col. 3, lines 28-31 and Col. 6, lines 20-22). This is interpreted as storing the test back in the test database in response to the communication resource not being available.

10. Referring to claim 13, Herrbach discloses a suite of tests in the library repository (See Col. 3, lines 26-31). This is interpreted as receiving a plurality of tests for storage in the test database.

11. Referring to claim 14, Herrbach teaches the results of the entire suite of test being reported to the test computer for storage and display (See Col. 5, lines 57-58). This is interpreted as processing system configured to transfer test results of the test to the test system.

12. Referring to claim 15, Herrbach discloses test computer coupled to a test resources database (See Fig. 1 and Col. 3, lines 22-25). This is interpreted as a resource database that stores a list of the communication resources.

13. Referring to claim 17, Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as determining if the request is for general use of the communication resource (See Col. 3, lines 56-57 and Col. 5, lines 2-3).

14. Referring to claims 18-21, Herrbach discloses the testing computer having a suite of tests in library procedure repository, this is interpreted as a processor system coupled to a plurality of tests in a test database, and running them sequentially, which is interpreted as selecting a second test (See Col. 3, lines 26-31 and Col. 5, lines 46-47). Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as identifying a communication resource for a test and determining if the communication resource is available (See Col. 3, lines 56-57 and Col. 5, lines 2-3). Finally, Herrbach discloses running the test after the resource has been acquired, this is interpreted as

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generating a execute instruction for the test in response to the resource to the being available (See Col. 5, lines 14-16).

15. Referring to claim 22, Herrbach teaches storing and the test procedures in a library procedure repository and also skipping tests when no working resources are available (See Col. 3, lines 28-31 and Col. 6, lines 20-22). This is interpreted as storing the test back in the test database in response to the communication resource not being available.

16. Referring to claim 23, Herrbach teaches an automated testing of a communications system having library procedure repository for storing software that is computer-executable, this is interpreted as a software product for managing the testing of a communication system on a software storage medium (See Fig. 1, Col. 1, lines 9-10 and Col. 1 line 60 to Col. 2, line 9). Herrbach also discloses the testing computer having a suite of tests in library procedure repository, this is interpreted as a processor system coupled to a plurality of tests in a test database, and running them sequentially, which is interpreted as selecting a first test (See Col. 3, lines 26-31 and Col. 5, lines 46-47). Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as identifying a communication resource for a test and determining if the communication resource is available (See Col. 3, lines 56-57 and Col. 5, lines 2-3). Herrbach teaches suite resource selection, this is interpreted as checking for resource availability including a first test from the plurality of tests (See Fig 2). Herrbach also



teaches suite resource selection and case resource selection, the resources are determined to be available in the suite resource selection that is before the individual tests are run by procedures ensure they are available and usable (See Fig. 2 and Col 5, lines 2-10). Finally, Herrbach discloses running the test after the resource has been acquired, this is interpreted as generating a execute instruction for the test in response to the resource to the being available (See Col. 5, lines 14-16).

17. Referring to claim 24, Herrbach teaches storing and the test procedures in a library procedure repository and also skipping tests when no working resources are available (See Col. 3, lines 28-31 and Col. 6, lines 20-22). This is interpreted as storing the test back in the test database in response to the communication resource not being available.

18. Referring to claim 25, Herrbach discloses a suite of tests in the library repository (See Col. 3, lines 26-31). This is interpreted as receiving a plurality of tests for storage in the test database.

19. Referring to claim 26, Herrbach discloses test computer coupled to a test resources database (See Fig. 1 and Col. 3, lines 22-25). This is interpreted as a resource database that stores a list of the communication resources.

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20. Referring to claim 28, Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as determining if the request is for general use of the communication resource (See Col. 3, lines 56-57 and Col. 5, lines 2-3).

21. Referring to claims 29-32, Herrbach discloses the testing computer having a suite of tests in library procedure repository, this is interpreted as a processor system coupled to a plurality of tests in a test database, and running them sequentially, which is interpreted as selecting a second test (See Col. 3, lines 26-31 and Col. 5, lines 46-47). Herrbach teaches attempting acquiring certain resources for the test, this is interpreted as identifying a communication resource for a test and determining if the communication resource is available (See Col. 3, lines 56-57 and Col. 5, lines 2-3). Finally, Herrbach discloses running the test after the resource has been acquired, this is interpreted as generating a execute instruction for the test in response to the resource to the being available (See Col. 5, lines 14-16).

22. Referring to claim 33, Herrbach teaches storing and the test procedures in a library procedure repository and also skipping tests when no working resources are available (See Col. 3, lines 28-31 and Col. 6, lines 20-22). This is interpreted as storing the test back in the test database in response to the communication resource not being available.

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23. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

24. Claims 4, 16, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herrbach et al. in view of Grey et al., U.S. Patent Application Publication US 2002/0124205, hereinafter referred to as "Grey".

25. Referring to claims 4, 16, and 27, Herrbach teaches all the limitations (See rejections of claims 1, 11, and 23 respectively) except for determining if the test requests exclusive use of a communication resource, however Herrbach does teach the test computer being a multitasking computer that can run multiple parallel testing processes (See Col. 3, lines 1-10). Grey discloses computer-based testing of products (See page 1, paragraph 1) that includes using a "mutex" that guarantees exclusive access to shared resources, this is interpreted as determining if a test needs exclusive access and then supplying it (See page 1, paragraph 5). It would be obvious to one of ordinary skill in the art at the time of the invention to combine the testing system of Herrbach with the exclusive access to resources of Grey. This would be obvious to one of ordinary skill in the art at the time of the invention because it allows synchronization among multiple processes (See Grey, page 1, paragraph 5).

### ***Response to Arguments***

26. Applicant's arguments, see page 8 of amendment, filed 21 July 2004, with respect to the Oath have been fully considered and are persuasive. The examiner notes that the supplemental response to the previous Office Action has been received containing the corrected Oath. The objection of the Oath has been withdrawn.

27. Applicant's arguments, see page 8 of amendment, filed 21 July 2004, with respect to claims 23-33 have been fully considered and are persuasive. The 35 U.S.C. 101 rejection of claims 23-33 has been withdrawn.

28. Applicant's arguments filed 21 July 2004, with respect to claims 1-33 concerning the 35 U.S.C. 102(e) and 35 U.S.C. 103(a) rejections have been fully considered but they are not persuasive.

The examiner notes that the applicant has two arguments concerning the patentable difference between the claims and the cited prior art. The applicant cites that Herrbach acquires resources for the entire test suite and that claim 1 identifies and determines whether resources before running the test.

Concerning the applicants first argument, the applicant cited that Herrbach acquires resources for the entire test suite as opposed the claim identifying resources for the individual tests. The examiner respectfully disagrees with this argument. Though the claim determines if resources are available for a first test, the claim language does not limit its self to determining for only the first test. Herrbach teaches

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suite resource selection, this is interpreted as checking for resource availability including a first test from the plurality of tests (See Fig 2).

Concerning the applicants second argument, the applicant cites that Herrbach acquires resources after the resources is already running and does not teach identifying resources and their availability before running the test. The examiner respectfully disagrees with this argument. Herrbach teaches suite resource selection and case resource selection, the resources are determined to be available in the suite resource selection that is before the individual tests are run by procedures ensure they are available and usable (See Fig. 2 and Col 5, lines 2-10).

The above rejections of the claims have been clarified to include this response to the Applicant's response.

### ***Conclusion***

29. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Manoskey whose telephone number is (703) 308-5466. After approximately October 13 the examiner can be reached at the new Alexandria telephone number (571) 272-3648. The examiner can normally be reached on Mon.-Fri. (8am to 4:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (703) 305-9713. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JDM  
October 5, 2004

  
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